

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	

COMMENTS OF ACA INTERNATIONAL

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Dated: January 23, 2018

EXECUTIVE SUMMARY

Illegal robocalls harm consumers and serve no legitimate purpose. As a result, ACA International supports efforts to thwart the growing number of unlawful robocalls through narrow and targeted technological solutions like those adopted in the Commission's *Report and Order and Further Notice of Rulemaking* released on Nov. 17, 2017. However, it is critical that as robocall processing tools are developed and implemented, the Commission ensures that these well-intended solutions do not inadvertently cause legitimate calls to be blocked, harming lawful business communications and depriving consumers of important, timely information.

In these comments, ACA describes the problems caused by robocall processing tools currently in use due to a lack of guidance from the Commission when it gave the green light to enable consumer-initiated call blocking in the omnibus *2015 TCPA Declaratory Ruling and Order*. Specifically, legitimate call originators need to know if a call has been blocked, as well as need access to a clear pathway to quickly rectify any errors. However, neither one of these fundamental needs is presently being met. To remedy these issues and to ensure consistent call blocking mitigation mechanisms are in place, ACA urges the Commission to adopt call blocking mitigation mechanisms that apply both to provider-initiated and consumer-initiated call blocking. ACA also highlights the similarity of problems associated with call labeling services and urges the Commission to consider future mitigation mechanisms in that context as well.

In addition, ACA discusses the negative impact that erroneous call blocking and improper labeling has had on legitimate debt collection calls. ACA shares preliminary feedback from an ongoing survey of ACA member experiences with call processing tools which demonstrates the need for callers to know when a call has been blocked, the challenges associated with not having a

clear and reliable mechanism for fixing errors, and the resulting harm to consumers who cannot be reached to resolve their accounts.

Finally, ACA offers input on specific questions posed by the Commission in the FNPRM. In ACA's view, the Commission should require providers who offer call blocking services, whether provider initiated or consumer initiated, to: (1) indicate a call has been blocked on a per-call basis using a defined, unique signaling code; (2) make available a defined, easy to use mechanism for callers to inquire about the blocking status of a number or set of numbers; and (3) make available a defined, easy to use mechanism for callers to challenge the status of a blocked number or set of numbers. ACA believes that through these reasonable mitigation measures, the Commission will achieve a better balance of protecting consumers from unlawful robocalls while ensuring consumers are not inadvertently losing access to important communications with legitimate businesses.

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ACA International (“ACA”) respectfully submits these comments in response to the *Report and Order and Further Notice of Proposed Rulemaking* (“Report and Order” or “FNPRM”) released by the Federal Communications Commission (“Commission”) in the above-referenced docket on Nov. 17, 2017.¹ In the *Report and Order*, the Commission adopted rules enabling voice service providers to block four categories of calls that are highly likely to be unlawful, including calls from phone numbers on a Do-Not-Originate list and calls from invalid, unallocated, or unused numbers. Given the narrow and well-defined nature of these calls, ACA supports the Commission moving forward with these provider-initiated call blocking rules to protect consumers from scammers who are abusing robocall technology for illegal purposes.²

In addition, given that call-blocking “false positives” are already occurring³ and the likelihood that they will continue to grow as call blocking becomes more prevalent, ACA applauds the

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 17-59, FCC 17-151 (rel. Nov. 17, 2017) (“Report and Order” or “FNPRM”).

² See Comments of ACA International, CG Docket No. 17-59 (July 3, 2017)(“ACA Comments”).

³ See Statement of Commissioner Michael O’Rielly, Report and Order (stating, “At the same time, I have heard concerns that blocking is increasingly capturing what I call “false positives.” That is,

Commission's inclusion of the accompanying FNPRM to seek comment on much-needed mitigation options. It is critical that as the Commission works toward solutions to thwart unlawful robocalls,⁴ it does not inadvertently cause legitimate calls to be blocked, depriving consumers of important, timely information. This FNPRM is an important step to establish a clear framework in which call originators will have a way to know their calls are being blocked, as well as to develop an expedient mechanism by which to promptly remove improper blocking.

In these comments, ACA describes the importance of applying call blocking mitigation rules to both provider-initiated call blocking and consumer-initiated call blocking, suggests that the Commission consider future mitigation mechanisms for improper call labeling, discusses how legitimate debt collection calls are being negatively impacted by robocall processing tools⁵ causing consumers to lose access to timely account information, and provides ACA's responses to the mitigation-related questions raised in the FNPRM. Overall, ACA respectfully urges the Commission to adopt mitigation measures to parallel its call blocking rules so that legitimate businesses can be assured their lawful communications are treated properly by call blocking services and that any mistakes can be quickly and easily rectified.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies,

certain calls from legitimate businesses offering legal products and services to willing and authorized consumers are also being blocked.”).

⁴ ACA once again urges the Commission to properly clarify the term “robocall” so that legitimate, informational business calls are not lumped into the same category as unwanted or scam calls. It is critical that these vastly different categories of calls stop being conflated so that more constructive dialogue can occur as tools are being developed to stop bad-actor robocallers.

⁵ In this comment letter, “robocall processing tools” refers to call blocking and call labeling services.

asset buyers, attorneys, and vendor affiliates in an industry that employs almost 220,000 employees worldwide. ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses with nearly 70 percent maintaining fewer than 20 employees.⁶

To effectively assist consumers in repaying their debts, it is essential that ACA members have the ability to communicate with consumers using the method that is most likely to reach those consumers which, in most cases, is via telephone. When contact with consumers is improperly impeded, debt collectors lose the ability to share critical account information that can help struggling consumers avoid negative consequences, such as adverse information being placed on a credit report, litigation, and wage garnishment. All of these alternatives can have long-lasting, negative financial impacts on a consumer.

II. COMMENTS ON THE FNPRM

A. Mitigation Measures are Needed for Both Consumer-Initiated Call Blocking and Provider-Initiated Call Blocking

Although the Commission's *Report and Order* is focused on enabling limited provider-initiated call blocking,⁷ consumer-initiated call blocking technology was broadly enabled by the Commission's omnibus *2015 TCPA Declaratory Ruling and Order* ("2015 TCPA Order") and is therefore already occurring in the marketplace. While well-intentioned, in providing the green light to consumer-initiated call blocking, the Commission failed to address the very issues that the Commission is

⁶ Josh Adams, Ph.D., *Small Businesses in the Collection Industry: An Overview of Organization Size and Employment*, ACA International White Paper (August 2016) *available at* <https://www.acainternational.org/assets/research-statistics/aca-wp-smallbusiness.pdf>.

⁷ FNPRM, ¶ 47 (stating, "While providers are not required to obtain subscriber consent before blocking these calls, we emphasize that the types of calls that can be blocked are very limited.").

currently considering in this FNPRM, namely whether and how a caller should be notified of a blocked call and steps a caller can take in the event a legitimate call is erroneously blocked. ACA commends the Commission for considering these critical issues at this time in concert with provider-initiated call blocking rules.

However, given the failure of the Commission to address these issues when enabling consumer-initiated call blocking in 2015, ACA urges the Commission to make clear that any call blocking mitigation tools it develops in this proceeding apply equally to consumer-initiated call blocking. While issues presumably are rare in instances when a consumer requests specific numbers to be blocked, when a consumer requests certain categories of calls to be blocked, this can lead to categorization errors which can result in mistakenly blocked calls. Whether provider initiated or consumer initiated, legitimate call originators have a need to know if a call has been blocked, as well as a need for a clear pathway to quickly rectify any errors.

B. The Commission Should Consider Future Mitigation Mechanisms for Improper Call Labeling

Adding to this problem has been the explosion of call labeling services which use algorithms similar to call blocking platforms in order to provide consumers with information about a call so that they can decide whether or not to answer. Like call blocking, while this is a laudable goal that can help protect consumers from bad actors, there is currently no regulatory framework for legitimate call originators to know how their calls are being labeled, nor how to correct any errors in the event they somehow discover an improper label has been used, such as tagging a legitimate business call as “scam likely.”

While not the specific subject of the FNPRM, improper call labeling raises similar issues to erroneous call blocking. As such, ACA respectfully urges the Commission to consider future mitigation mechanisms in that context as well. In both of these instances – erroneous call blocking and improper call labeling – not only is the originating caller harmed, but the consumer who did not

receive a call due to erroneous blocking or chose not to answer based on an improper “scam likely” label is deprived of important information.

C. Although Well-Intentioned, Robocall Processing Tools Are Having a Substantial Negative Impact on Debt Collection Calls

The failure in the *2015 TCPA Order* to establish any framework for how callers can handle erroneously blocked calls in the consumer-initiated context has led to a very confusing and harmful state of affairs for legitimate businesses that rely on telephone communications with consumers. In 2017, ACA members became increasingly alarmed as they began to discover drops in right-party contacts (“RPCs”) coupled with discoveries that their legitimate business calls were being labeled as “suspected scam,” “scam likely,” or some other version that implied the call was not from a legitimate caller. Given the critical importance of effective two-way communication to the debt collection process, this has become a serious issue that threatens the fundamental ability of debt collectors to communicate with consumers to share important account information and resolve outstanding debt. ACA believes that the unintended negative effects of robocall processing tools will only get worse without intervention.

In an effort to get a sense of the impact of robocall processing tools on ACA’s members, ACA has been conducting an ongoing survey of members who have discovered their calls are being blocked or mislabeled. At the outset, it is important to keep in mind that the debt collection industry is composed overwhelmingly of small businesses. Given this, it is unsurprising that in the preliminary robocall processing research ACA has conducted, nearly 80% of respondents who have had their calls improperly blocked or labeled are considered a small business under the Small Business Administration’s size standard for the collections industry, i.e. they have average annual receipts less than \$15 million.

In terms of how ACA members discovered their calls were being blocked or mislabeled, there was clearly no easy way for a member to check. Instead, members typically were either

informed by a consumer or ran some test calls on personal cell phones. Some of the responses include:

- “Multiple consumers made statements when we called. We then heard about issue in a professional format from another company.”
- “Consumers advised us that they saw it on their phone and suspected that we were a scam. They would refuse to verify their information so we could discuss their account.”
- “Test calls to internally held cell phones with multiple carriers.”
- “An employee made us aware of it when we made a direct call from the office to their phone and their caller ID said that our number was a scam.”

We also asked our members to describe any efforts to rectify discovered issues.

Unfortunately, without clear mitigation options, there have only been short-term workaround attempts while direct outreach efforts have not yielded much success. Some examples:

- “Numbers are being replaced regularly as they are identified.”
- “We are being forced basically to order new phone numbers.”
- “We have reached out to direct carriers and typically just get to a support desk. We've also engaged our major telecom brokers and telephony providers. No real results from any of these efforts.”

In response to how this issue has impacted the ability to communicate account information to consumers, ACA members were clear: the impact has been significantly negative both in terms of hindering communication outright, as well as in hindering constructive dialogue due to first having to justify that they are a legitimate business despite a “scam likely” label. Here are some specific responses:

- “We have seen a loss of contacts along with skepticism from consumers when we do make contact.”
- “This has had a considerable impact on our ability to establish trust with the consumers so we can assist them with their debt.”
- “We believe it has had a definite impact. Since we are unable to get calls through, the consumers may be placed at a disadvantage through no intent of their own.”
- “This severely impacts our business. Not many people will answer the phone after the word ‘scam’ pops-up.”
- “Consumers for which we have a business relationship with are missing out on valuable communications.”
- “This issue has impacted communication with consumers. However, it is also impacting our employment efforts. We are showing up as scam when we call applicants that have sent in

resumes responding to our employment ads. We have seen a major decline in our call backs.”

- “It’s a major impediment. Contacting a consumer by phone is often the only way to communicate with them about a debt. Having our legitimate number identified as a scam will result in consumers not taking our call.”
- “If this continues it will simply put us out of business.”

Finally, we asked ACA members about the impact of these issues on their ability to effectively operate their business. Many of them described the fundamental importance of telephone communications to the effective recovery of debt and how the current robocall processing tool landscape is inadvertently depriving consumers of important account information which can have serious financial consequences:

- “If we are unable to speak to the consumer, we then have to follow additional collection options, which can be costly and time consuming, like filing suit to obtain judgment for garnishment purposes.”
- “It will make it increasingly difficult to settle accounts with our customers without filing lawsuits.”
- “We cannot do our job at all without the ability to reach consumers we have a business relationship with.”
- “This is crippling our business on multiple fronts.”
- “It will also result in consumers not knowing about their debt until after we’ve reported it to the credit reporting agencies and, by then, whatever impact we may have had to their credit is done.”

D. ACA’s Responses to FNPRM Questions

ACA agrees with the conclusion of the Federal Trade Commission “that technological innovations are a critical component of the long-term solution to protecting consumers from ... illegal telemarketing calls.”⁸ At the same time, as new technologies are used in the battle against unlawful robocalls, it is critical that minimizing unintended consequences to legitimate callers is seen as a parallel priority, including making effective mitigation measures available so that mistakes can be corrected as quickly and easily as possible.

⁸ See Comments of the Federal Trade Commission, CG Docket No. 02-278; WC Docket No. 07-135 (Jan. 23, 2015).

As a result, although in the *Report and Order* the Commission “encourages” providers who block calls: (1) to provide a way for subscribers to challenge a blocked number using a simple method that is easy for the average subscriber to understand, and (2) to quickly resolve the matter so subscribers making legitimate calls may resume doing so speedily,⁹ ACA believes that developing clear rules that require such efforts is essential to protect legitimate business communications.

With this backdrop, ACA offers the following input on questions posed by the Commission in the FNPRM. ACA wants to emphasize that many of these same points apply equally to call labeling services; therefore, ACA reiterates its recommendation that the Commission consider future mitigation mechanisms in that context as well.

Should we require blocking providers to establish a challenge mechanism by which callers can inform them of erroneous blocking and such blocking can quickly be fixed?

A challenge mechanism is absolutely necessary so that legitimate callers have a quick and easy way to correct an improperly blocked call. Without such a clear mechanism, callers will have to spend time and resources trying to figure out workaround solutions, such as repeatedly changing phone numbers, which are not sustainable. At the same time, consumers will lose access to important account information that can cause substantial financial harm as legitimate businesses struggle to find ways to get their calls unblocked. As ACA’s preliminary research demonstrates, the negative consequences of not having a clear challenge mechanism are not mere conjecture; they are already occurring in the context of consumer-initiated call blocking.

What is the quickest way for callers to be informed of blocking, e.g., should providers send an intercept message to callers to notify them of the block with contact information by which a caller can report and rectify the situation?

As a threshold matter, it is critical for call originators to know when a carrier has blocked a call. This information must be provided on a per-call basis so that callers can use the information to

⁹ See Report and Order, ¶ 54.

determine if a mistake has been made and/or to determine whether alternative communication methods are needed so that a consumer is not deprived of timely information.

At present, ACA members have discovered that some carriers return a “busy” signal when blocking a call. This is problematic for several reasons. First, it is inherently deceptive for a carrier to return a signal that a called number is busy when in fact the call has been blocked by the carrier. As the Commission has previously stated, “it is a deceptive or misleading practice...to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service.”¹⁰ Second, if a legitimate caller receives a busy signal, typically the caller will make repeated attempts in an effort to make live contact. In the case of a blocked call, however, the time and resources spent on subsequent attempts would be wasted. Third, the natural consequence of these repeated call attempts is a needless drain on network resources. Finally, and very importantly, because time is elapsing during the caller’s futile attempts to reach the consumer, the intended consumer – who likely is unaware that a call with personal account information is being blocked – loses access to timely information that could potentially be provided in an alternative way if only the caller had known the call was actually being blocked.

Despite all of these sound reasons for indicating to call originators when their calls have been blocked, ACA understands that the Commission has already heard some concern that such indicators would tip-off bad actors who would be alerted to stop using that number.¹¹ While this may be true to some extent, the fact is bad actors are already rotating their numbers on a frequent basis. As such, the blocked tones may cause some acceleration in scammers not using certain

¹⁰ Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers, *Declaratory Ruling*, CC Docket No. 01-92, WC Docket No. 07-135, DA 12-154 (rel. Feb. 6, 2012), ¶ 13.

¹¹ See, e.g., Letter from John Ayers, Vice President of Corporate Development, First Orion, to Marlene H. Dortch, Secretary Communications Commission, CG Docket No. 17-59 (Dec. 20, 2017).

numbers, but this potential pales in comparison to the fundamental importance of providing legitimate callers with accurate information about the number they are calling.

Given this, ACA strongly urges the Commission to require a per-call indication to the call originator that their call was blocked by defining a unique signaling call code to be used in such circumstances. A unique signaling code for blocked calls provides a clear, non-misleading indication to the call originator that can be used to make an informed decision on whether a block should be challenged and/or how to further communicate with that consumer. Although creating and employing a new signal will result in some burden on carriers, this burden is far outweighed by the benefit of ensuring consumers are not inadvertently losing access to timely account information.

Should challenge mechanisms be different based on the scale of the blocking provider?

The scale of the blocking provider should not dictate the type of challenge mechanism to be used. However, a call originator should be able to challenge numbers that they have discovered are being improperly blocked, as well as have the ability to proactively check the status of a number or set of numbers. This means that it may be more effective to have different mechanisms depending on the scale of the inquiry, i.e. a mechanism to check individual numbers versus a mechanism where a dataset of numbers can be checked for their blocking status.

Alternatively, does our informal complaint process provide a mechanism to surface erroneous blocking to providers and correct it? Are there ways we could modify our informal complaint process to address the time-sensitive nature of erroneous call blocking?

While the Commission's informal complaint process can be useful to spot certain patterns or handle disputes on the proper status of a number being blocked, it is an insufficient alternative to a formal challenge mechanism for improperly blocked calls. Universally, ACA members have indicated the significant importance of identifying and remedying improperly blocked calls as soon as possible so that essential dialogue with consumers to resolve their accounts can occur.

Once a caller is aware of erroneous blocking, how can we best ensure their calls are unblocked? Should providers cease blocking calls as soon as is practicable upon a credible claim by the caller that its calls are being blocked in error?

The Commission should mandate a timeframe for the unblocking of numbers once verification of an error has been made. If a caller has previously been verified as legitimate, then resolution should occur within one day. As one ACA member stated, “Businesses that rely/depend on outbound calling would be forced to shut down their business if a lawful [number] was blocked any longer than 24 hours. There has to be a mechanism for these [numbers] to be unblocked very quickly.”¹² This is especially true for small business debt collection agencies.

Should we establish specific timeframes and requirements for making a credible claim of erroneous blocking?

ACA does not believe there should be any timeframes for a caller to make a credible claim of erroneous blocking.

How can we mitigate the risk that makers of illegal robocalls will exploit such a process?

Unfortunately, until a robust caller authentication system like that envisioned by SHAKEN & STIR is fully deployed, there is potential risk that unscrupulous robocallers will attempt to exploit any mitigation tools. As the Robocall Strike Force pointed out, “Fraudulent robocallers constantly change their methods to bypass blocking solutions as they are implemented.”¹³ Given this, mitigation tools cannot be dismissed outright because scammers might abuse them; instead, solutions need to include ways to protect legitimate business calls while at the same time minimizing the potential for robocalling fraud. For example, in developing a call blocking challenge mechanism, one way to potentially curb abuse is to require those making a request to unblock a number to first show it actually possesses assignment of that number. In addition, in order to be able to use the

¹² See ACA Comments at 10.

¹³ Robocall Strike Force Report (Oct. 26, 2016), at 2, *available at* <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>

challenge mechanism, call originators may need to register and verify their identity, a process that scammers would likely want to avoid.

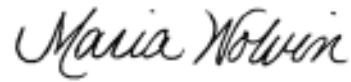
III. CONCLUSION

Illegal robocalls harm consumers and serve no legitimate purpose. As a result, ACA supports the Commission's decision to thwart the growing number of unlawful robocalls through narrow and targeted technological solutions like those in the *Report and Order*. However, as these comments make clear, robocall processing tools have already begun having a substantial negative impact on legitimate business communications. Legitimate callers are being harmed by often not knowing why they are unable to reach a consumer and by not having a way to resolve problems in the event they discover their calls are being blocked or mislabeled. At the same time, consumers are being harmed by the erroneous blocking and improper labeling of calls containing important account information. Clearly, the Commission did not intend for these consequences when it enabled providers to block calls.

Given this, ACA respectfully urges the Commission to require providers who offer call blocking services, whether provider initiated or consumer initiated, to: (1) indicate a call has been blocked on a per-call basis using a defined, unique signaling code; (2) make available a defined, easy to use mechanism for callers to inquire about the blocking status of a number or set of numbers; and (3) make available a defined, easy to use mechanism for callers to challenge the status of a blocked number or set of numbers. In addition, in light of similar concerns raised by improper call labeling, ACA also respectfully urges the Commission to consider the need for potential mitigation tools in the call labeling context as well.

Through reasonable mitigation measures, the Commission will achieve a better balance of protecting consumers from unlawful robocalls while ensuring consumers are not inadvertently losing access to important communications with legitimate businesses.

Respectfully submitted,



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